

FEDERAL ADVISORY COMMITTEE ACT



Presentation to Search for Earth-Like Planets Strategic Roadmap Committee First Meeting, Tucson, AZ

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Background



- **Advisory committees to the Federal Government have a long and storied history**
 - George Washington/Whiskey Rebellion
 - Warren Commission/JFK
 - Three Mile Island Commission
 - President's Commission on Implementation of U.S. Space Exploration Policy
- **Today, approx. 1000 Federal advisory committees advise the Executive Branch, with over 50,000 committee members**
 - HHS, DOD, NSF, DOI have large numbers of advisory committees
 - NASA currently has 26 advisory committees, including 13 Strategic Roadmap Committees

What is a FACA Advisory Committee?



- **1972 Federal Advisory Committee Act (FACA) – Public Law 92-463**
 - Provide advice that is relevant, objective, open to public
 - Act promptly to complete work
 - Comply with reasonable cost controls and recordkeeping requirements
- **Established by Statute, the President or Federal agency, or “utilized” by the President or Federal agency**
 - To obtain advice or recommendations for the President or agency
 - Contains at least one non-Federal employee
- **“Good government” tradition (FOIA, Sunshine Act, Ethics, etc.)**

What Must All FACA Committees Have?



Charter

- Top Federal agency official must decide that an advisory committee is essential to the performance of a duty or responsibility of that Agency
- Charter sets out committee purpose/responsibilities/costs; typically has a 2-year duration; automatically terminates unless renewed

GSA Approval

- The U.S. General Services Administration (GSA) is responsible for approving all proposed charters for FACA committees
- GSA manages Government-wide ceiling on FACA committees
- After GSA approval, Agency head signs Charter; then filed with Congress

What Must All FACA Committees Have?



CMO

- Each Federal agency required to have a Committee Management Officer (CMO)
- Each Agency head must appoint a senior official to this statutorily-mandated position
- Role to provide management oversight of all Agency advisory committees, ensure FACA compliance, liaison/annual reporting to GSA
- Charters new FACA committees
- Signs all Federal Register notices (establishment/meeting)
- Works closely with Office of General Counsel on ethics issues
- Works closely with Agency DFO's on policies, procedures, issues

What Must All FACA Committees Have?



DFO

- Each FACA advisory committee must have a a Designated Federal Official (DFO) who:
 - Calls, attends and adjourns meetings
 - Approves agendas
 - Maintains required official records of committee, including minutes, membership and cost records
 - Maintain record for availability to the public
 - NASA uses various titles for its DFO's (e.g., executive director, executive secretary) but responsibilities are the same

What Must All FACA Committees Have?



Members

- Membership must be “*fairly balanced*” with regard to points of view to be represented and the functions to be performed.
- Anyone can nominate members for advisory committee membership; Federal agency head appoints them.
- Two types: “Special Government Employees” (SGE’s) and “Representatives.”
- SGE’s must file required financial disclosure forms (“450’s”) for review by the NASA Office of General Counsel.

Why Does FACA Require Public Meetings?



Public Meetings

- Goals of the FACA statute include:
 - Reducing inappropriate influence on government decisions
 - Eliminating government decision made behind closed doors
 - Improving public confidence in decision making
 - Allowing public contemporaneous access to decision process
 - Ensuring positive public perception of Federal agency decision-making
 - “Good government”

Public Meetings – cont'd



- **FACA is a public access, not a public participation statute.**
 - All deliberations of a FACA committee seeking to reach “consensus” on advice to be given to the Agency must occur in a public meeting.
 - GSA says “consensus” requires a quorum:
 - Quorum equals 1/2 of number of members, plus 1
 - No requirement that “consensus” be reached in any particular public meeting.

Public Meetings – cont'd

To Assure Public Access:

- **Notice of meeting:** Time, location and agenda – must be published in the Federal Register at least 15 calendar days before the scheduled meeting.
- **Accessible meeting location:** But Agency is not required to accommodate all of the public.
- **Posting committee information on a Website:** Including minutes and documents considered at each meeting.
- **Public may submit documents/written statements:** Committee is free to use public input as it sees fit.
- **Teleconferences are possible:** But need public access, e.g., separate room with speakerphone and call-in line. Also need Federal Register notice.

Public Meetings – cont'd



A Few Special Exceptions to Public Meeting Requirement:

- National security
- Trade secrets, or commercial or financial information
- Criminal investigatory records
- Issuance of subpoenas or litigation strategy
- Specifically exempted by statute
- Activities not covered by FACA (e.g., purely administrative, fact-finding)
- Closing a meeting must be planned in advance, and cleared with Agency CMO and Office of General Counsel

Questions?



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Ethics/Financial

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